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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1031 93

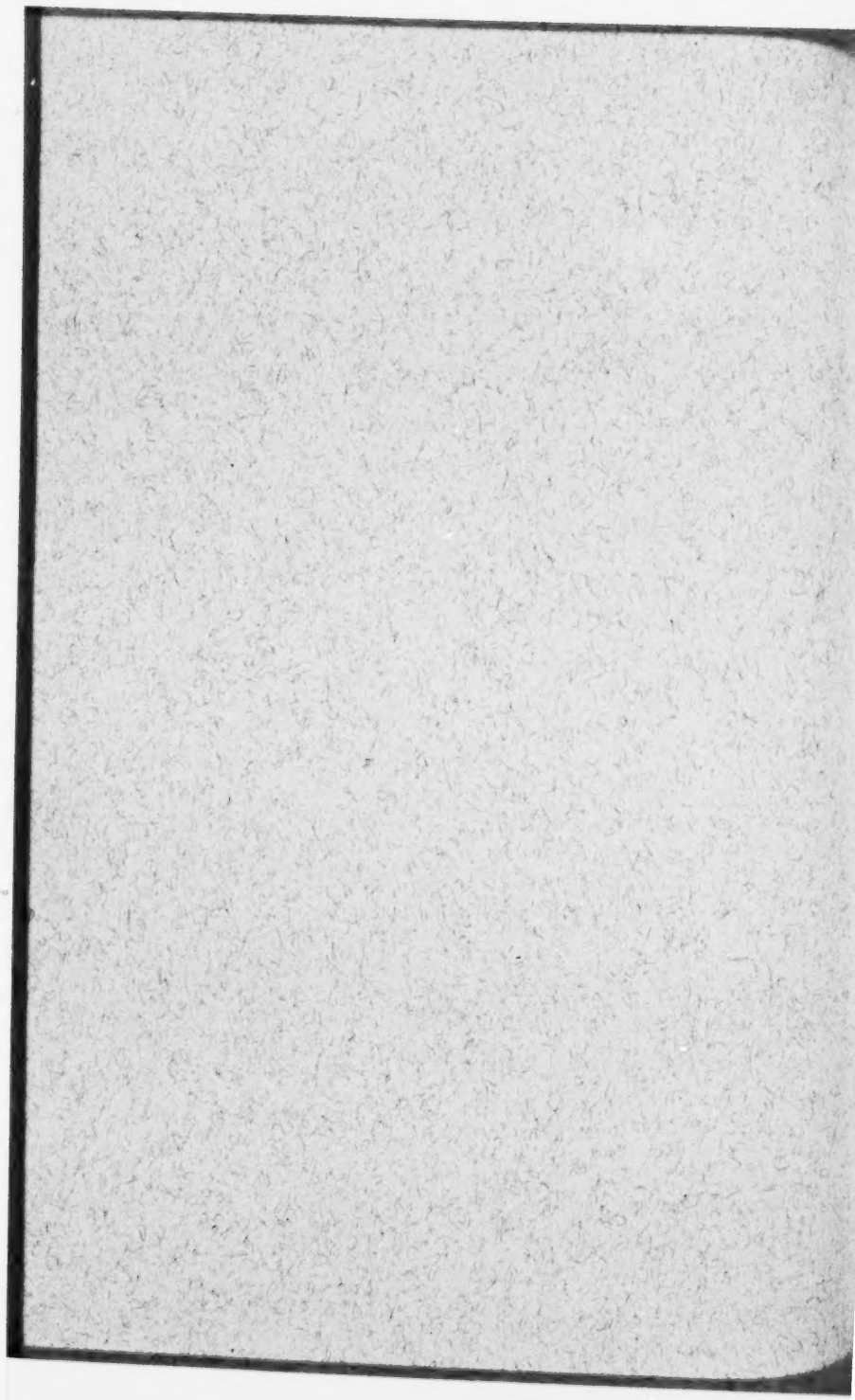
MARGARET B. CARPENTER AND L. E. CARPENTER,
ALSO KNOWN AS LEROY E. CARPENTER,
Petitioners,

vs.

ARCHIBALD J. HAMILTON.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

A. L. WIRIN,
Counsel for Petitioners.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1031

MARGARET B. CARPENTER AND L. E. CARPENTER, ALSO KNOWN AS LEROY E. CARPENTER,
Petitioners,

vs.

ARCHIBALD J. HAMILTON.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Your petitioners Margaret B. Carpenter and L. E. Carpenter, also known as Leroy E. Carpenter, respectfully allege:

A.

Summary Statement of the Matter Involved.

The petitioners are defendants in a foreclosure proceeding brought in the Superior Court of Los Angeles County to foreclose a certain trust deed with respect to certain real property purchased by said defendants from the plaintiff, Archibald J. Hamilton (R. 2). The purchase price for

the said property was $12,500.00 (R. 12). Defendants paid $5,000.00 on account of said purchase price and gave the trust deed in question to secure the balance of $7,500.00 (R. 3). The property in question is occupied by petitioners as their home (R. 13).

Prior to the commencement of said foreclosure suit, petitioners had instituted an action in said court against said Archibald J. Hamilton to recover damages for fraudulent representations alleged to have been made to them by said Hamilton on the sale to petitioners of said property (R. 29). The trial of said action was by jury and after a verdict was rendered for petitioners. Thereafter a new trial was granted to defendant Hamilton. Hamilton then moved for judgment notwithstanding the verdict, which motion was denied. Hamilton then appealed from the order denying his said motion for judgment notwithstanding the verdict and from the judgment on the verdict (See Remittitur R. 36). An appeal from the judgment thereon was taken by said Hamilton to the District Court of Appeals for the Second Appellate Dist. of California upon which appeal, judgment for petitioners was reversed and the cause remanded with directions to the said Superior Court to enter judgment in favor of said Hamilton (R. 36), which judgment was accordingly entered (R. 37).

In the foreclosure proceeding petitioners interposed an answer to plaintiff Hamilton's complaint setting out as an affirmative defense therein the said fraudulent representations alleged in the former fraud action to have been made by said Hamilton, together with additional such representations so made (R. 10 *et seq.*).

On the trial of said foreclosure proceeding the court admitted into evidence the judgment roll in the previous action for fraud (R. 27) and denied petitioners proffer of proof as to the matters set forth in their said affirmative

defense (R. 27, 28). Said denial was upon the ground that the matters sought to be introduced in evidence had been previously adjudicated in the former action for fraud (R. 28).

Judgment of foreclosure was thereupon entered against petitioners and in favor of said Hamilton (R. 23). An appeal from said judgment was taken by petitioners to the Supreme Court of California (R. 46 *et seq.*) and the said court affirmed said judgment on the ground that the question of Hamilton's fraud had been previously adjudicated in the former action (R. 46 *et seq.*).

The constitutional question raised by this petition for a writ of certiorari is whether the petitioners have been deprived of their property without due process of law as guaranteed by the 14th Amendment to the Constitution of the United States.

More precisely the question is whether the refusal of the trial court (which refusal was affirmed by the Supreme Court of California) to allow the introduction of evidence, proffered by the petitioners, to the effect that the respondent (plaintiff below) was guilty of "unclean hands", constitutes the denial, in effect, of a hearing, and hence denied due process.

It is a novel question never heretofore determined by this court.

1. Statutory Provisions sustaining Jurisdiction. Jurisdiction of this Court is invoked under Judicial Code, sec. 237b, as amended by Act of February 13, 1925, 43 Statutes 937.

2. The judgment of the Supreme Court of California, sought to be reviewed herein, is dated February 5, 1940; a petition for rehearing, duly filed with the Court below, was denied on March 5, 1940.

3. The Supreme Court of California is the court of last resort in California.

4. The judgment sought to be reviewed is a final judgment.

5. The action is one in equity for foreclosure of a trust deed and petitioners had interposed an affirmative defense to such action which in effect invoked the equitable doctrine of "unclean hands" (R. 10 *et seq.*). By the rulings of the court, petitioners were precluded from asserting this doctrine as a defense of said action and have thereby been deprived of a substantial right to protect their property against an inequitable foreclosure. Such action on the part of the court amounts to a denial of due process under the 14th Amendment to the Constitution of the United States. The cases which the petitioners believe sustain the jurisdiction of this Court are *Carolene Products Co.* v. *McLaughlin,* 365 Ill. 62, 5 N. E. (2d) 447; *B. & O. R. R. Co.* v. *U. S.,* 298 U. S. 349, 364 *et seq.; Palko* v. *State of Connecticut,* 302 U. S. 219; 58 S. Ct. 149.

B.

Ground on Which Contended Questions Involved Are Substantial.

The petitioners, as defendants in the proceedings in said Superior Court were in effect denied a hearing because deprived of the right to assert and prove a substantive and substantial defense, namely, that the plaintiff was guilty of unclean hands; the right to introduce evidence supporting such a defense is a fundamental right inherent in due process.[1]

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[1] *Carolene Products Co.* v. *McLaughlin,* 365 Ill. 62, 5 N. E. (2d) 447; See *Ga. R. & Elec. Co.* v. *Decatur,* 295 U. S. 165, 171, 79 L. Ed. 1365, 1370, 55 S. Ct. 701; *B. & O. R. Co.* v. *U. S.,* 298 U. S. 349, 364, *et seq.,* 80 L. Ed. 1209, 56 S. Ct. 797.

That the question of the right of petitioners, the defendants, to present evidence of unconscionable conduct on part of plaintiff in connection with the transaction in issue was raised in the trial court by proffer of proof as to the defense of plaintiff's (R. 27 *et seq.*) "unclean hands"; that it was brought to the Supreme Court of California upon an appeal because of the trial court's having sustained the objection to said proffer of proof (R. 46 *et seq.*).

The trial court sustained the objection to defendants' proffer of proof as aforesaid on the ground that the matter had been once adjudicated (R. 28). The Supreme Court in its decision on appeal affirmed the ruling of the trial court by holding that the question of fraud had been adjudicated in the former action between the parties (Decision of California Supreme Court, R. 46 *et seq.*).

Reasons Relied On for Allowance of Writ.

Petitioners contend that in the court of first instance the refusal of said court to hear evidence as to defendants' defense of "unclean hands" denied to defendants a hearing before said court and a consequent deprivation of property without due process of law.

The doctrine of "unclean hands" is a fundamental concept of equity jurisprudence of ancient origin, and broad application.[2] It is the expression of the elementary and fundamental conception of equity jurisprudence.[3] To abrogate the doctrine is to offend Federal due process.

Defendants were therefore deprived of a substantial right in being precluded from offering evidence in support of their defense of plaintiff's "unclean hands" in connection with the matter at issue.

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[2] *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 78 L. Ed. 293, 54 S. Ct. 146; *Horton* v. *Little et al.*, 188 Ala. 640, 65 So. 951.

[3] *American Association* v. *Innis*, 109 N. Y. 595, 60 S. W. 388, 22 Ky. L. 1196.

The question of plaintiff's right to offer this evidence in their defense was brought to the bar of the courts of California.

Petitioner contends that the question of plaintiff's "unclean hands" in connection with the matter in issue in the foreclosure suit is separate and distinct from the question of fraud.

It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with controversy to which he is a party, will repel him from the forum whose very foundation is good conscience. (1 Pomeroy's Equity Jurisprudence, Fourth Edition, 761.) Aside from the apparent basis of the ruling of the appellate court in the fraud action, namely, that your petitioners had the opportunity to discover Hamilton's fraud, the matter of Hamilton's "unclean hands" was not in issue in the fraud case and was therefore never decided in that case (R. 38)—(Decision of District Court of Appeal). The action for fraud was a legal action—the proceeding in foreclosure an equitable one. The matter of a party's "unclean hands" is within the exclusive jurisdiction of equity. There were no equitable issues in the fraud action.[4]

The action of the trial court in denying petitioners the right to present evidence in support of their defense as to plaintiff's "unclean hands" constituted a violation of the guaranty of due process.[5]

WHEREFORE, your petitioners respectfully pray that this Court issue a writ of certiorari to review the judgment of

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[4] See *Harns* v. *Stern*, 229 Fed. 42, 145 C. C. A. 2; *Hills* v. *Sherwood*, 48 Cal. 386; *People's Pure Ice Co.* v. *Trumbull*, 70 Fed. 166, 17 C. C. A. 43.

[5] *Carolene Products Co.* v. *McLaughlin*, *supra*.

the Supreme Court of California affirming the decree of foreclosure of the Superior Court of said State in and for the County of Los Angeles directed against the real property of your petitioners.

Respectfully submitted,

A. L. WIRIN,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1031

MARGARET B. CARPENTER AND L. E. CARPENTER,
ALSO KNOWN AS LE ROY E. CARPENTER,
Petitioners,

vs.

ARCHIBALD J. HAMILTON.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Specification of Errors.

Petitioners assign the following errors in the record and proceedings below:

(1) The trial court below deprives the petitioners of property without due process of law, as guaranteed by the XIV Amendment to the Constitution of the United States of America, in rejecting the petitioners' proffer of proof that the respondent was guilty of "unclean hands".

(2) The court below, the Supreme Court of California, abridged the petitioners' property without due process of

law, as guaranteed by the XIV Amendment to the Constitution of the United States of America, by affirming the ruling of the trial court rejecting the petitioners' proffer of proof of the respondent's "unclean hands".

II.

Summary of Argument.

Point 1.

The petitioners have been deprived of their property without due process of law under the XIV Amendment to the Constitution of the United States of America, in that petitioners were denied a hearing in the trial court below through refusal of that court to permit petitioners to offer evidence as to their affirmative defense of plaintiff's unconscionable conduct in connection with the matter at issue.

The defense of petitioners with respect to plaintiff's unconscionable conduct was in effect the defense that plaintiff had come into equity with "unclean hands". This equitable doctrine is a fundamental of equity jurisprudence [6] and one exclusively within the jurisdiction of equity.[7]

The trial court sustained the objection to petitioners' proffer of proof as to this defense on the ground that there had been a prior adjudication of the matter and that said adjudication was had in the previous action brought by petitioners against plaintiff Hamilton for damages for fraudulent representations made by Hamilton on the sale of certain real property to petitioners.

There had been no such prior adjudication. The question of plaintiff's "unclean hands" was not in issue in the

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[6] *Keystone Driller Co.* v. *Gen'l Excavator Co.* (*supra*); *Horton* v. *Little et al.* (*supra*); *American Assn.* v. *Innis* (*supra*).

[7] *Harns* v. *Stern*, 229 Fed. 42, 145 C. C. A. 2; *Hills* v. *Sherwood*, 48 Cal. 386.

action for fraud.[8] Furthermore, the decision and judgment of the California District Court of Appeals for the Second Appellate District setting aside the verdict of the jury in the trial court and ordering judgment for the defendant in that action was based on the view that plaintiffs in that action, your petitioners here, had the opportunity of discovering the fraud of the defendant and had failed to do so, and was not based on a holding that the defendant was free of all fraudulent conduct (Opinion of District Court of Appeals (R. 38)).

The foreclosure proceeding was one in equity. The plaintiff, Hamilton, defendant in the fraud action, was seeking to foreclose on the property he had sold to petitioners through his fraudulent representations. Your petitioners contend that the amount of the purchase price for said property was due to the fraudulent representation of Hamilton and that the trust deed, the lien of which was sought to be foreclosed, had been set at an excessive amount because of those same fraudulent representations. Hence Hamilton had been guilty of "unclean hands" in the transaction of which the trust deed was a part and being so guilty could not come into equity seeking foreclosure under a trust deed the amount of which had been fixed because of his fraudulent representations as to the value of the property. (See allegations set forth in the third defense of petitioners' answer.) (R. 10, *et seq.*)

Petitioners were entitled to set up Hamilton's unconscionable conduct as a defense to his action in foreclosure.

B. & O. R. Co. v. *U. S.*, 298 U. S. 349, 364, *et seq.*, 80 L. Ed. 1209, 56 S. Ct. 797;

Wash. ex rel. Ore. R. R., etc. v. *Fairchild,* 224 U. S. 510, 56 L. Ed. 863, 32 S. Ct. 535;

Ga. R. & Elec. Co. v. *Decatur, supra;*

Carolene Products Co. v. *McLaughlin, supra.*

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[8] *Lillis* v. *Immigrant Ditch Co.*, 95 Cal. 553, 30 P. 1108. See *Brandt* v. *Krogh*, 14 Cal. App. 39, 51, 52; 111 P. 275.

This they were precluded from doing by the trial court's arbitrary ruling, which ruling has now been affirmed by the Supreme Court of California.

The defense of "unclean hands" constituted petitioners' sole complete defense to the action in foreclosure. To deny them the opportunity of presenting this defense was, in effect, to deny them a hearing and an opportunity to defend their property against foreclosure. This constituted a denial of due process, as guaranteed by the Federal Constitution.

A party has the right to the opportunity, when in court, to establish any fact, which, according to the usages of common law or the provisions of the Constitution, would be a protection to his property,[9] and where the matter or fact sought to be established is essential to the substance of a hearing, a denial of the opportunity to establish such fact is a denial of due process.[10]

III.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A. L. WIRIN,
Attorney for Petitioners.

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[9] 12 Am. Jur. 314, Sec. 622 and cases cited in Note 16.

[10] *Palko* v. *State of Connecticut*, 302 U. S. 219, 58 S. Ct. 149.

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IN THE

Supreme Court of the United States

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No. [redacted] 93

MARGARET B. CARPENTER and L. E. CARPENTER, also known as LEROY E. CARPENTER,

Petitioners,

vs.

ARCHIBALD J. HAMILTON,

Respondent.

PETITIONERS' REPLY BRIEF ON PETITION FOR CERTIORARI.

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ARCHIBALD J. HAMILTON,

Respondent.

PETITIONERS' REPLY BRIEF ON PETITION FOR CERTIORARI.

I.

Casual Statements of Respondent's Preliminary Outline of the Case Are Misleading as to the Facts.

1.

The proceeding in the California courts, with respect to which the petitioners seek certiorari, is not a "mortgage foreclosure" suit, as asserted in respondent's brief (Resp. Br. p. 1). It is a suit in equity for the foreclosure of a deed of trust. The distinction is pertinent to the federal question,—as to whether there was a denial of due process in equity—and whether judgment for the sale of the petitioners' property was rendered without a hearing, for the reason that, whereas a mortgage MUST

be foreclosed by action in equity, there is a choice of procedure, under California law, to foreclose a trust deed.

California Code of Civil Procedure, Secs. 726, 725a, 692, 694;

California Civil Code, Sec. 2924.

When the state court, sitting in equity, ordered the home of the petitioners to be sold, without, in effect, affording the petitioners a hearing, by foreclosing all inquiry into the alleged unconscionable conduct of the respondent, it did so in a proceeding which the respondent had himself selected, since there was available to him the alternative procedure at law of sale under the terms of the trust deed.

2.

The respondent (Resp. Br. pp. 2, 3) fails to mention that the "judgment against the petitioners", in the former action for damages for fraud, was a "judgment notwithstanding the verdict" restricted to the issue of negligence on the part of petitioners only. The facts once determined by the jury, that the allegations as to the respondent's misrepresentations were true, were *not* reexamined or reversed by the judgment of the District Court of Appeal [Rec. pp. 38-45].

Indeed, the reversal of the jury judgment rendered in favor of the petitioners was achieved by most unusual procedure under Sec. 629 of the California Code of Civil Procedure, which was repealed almost simultaneously with the entry of said reversal of jury judgment (March, 1937). We know of no other case in which a judgment notwithstanding the verdict was entered AGAINST THE PLAINTIFF without an appeal by both litigants, after an order for a new trial as to all the issues had been granted

by the trial court and while both parties were in the same position as if no trial had occurred.

The above facts are pertinent to this petition for writ of certiorari, in that the "whole evidence" (Art. VI, Sec. 4½, Constitution of the State of California) was not before the District Court of Appeal in the former fraud action, and that court did not adjudicate any issue except that of alleged negligence on the part of the petitioners [Opinion of the District Court of Appeal, Rec. pp. 38-45]. Said court was, in fact, prohibited from re-examining or readjudicating the facts of the respondent's misrepresentations, once determined by the jury in favor of the petitioners here.

California Code of Civil Procedure, Secs. 592, 2101, 608, 1847, 956a;

Constitution of California, Art. I, Sec. 7, and Art. VI, Sec. 4½;

California Civil Code, Secs. 1574, 3442.

This court has decided that the only modes known to common law to "reexamine" facts once tried by a jury are the granting of a new trial by the court where the issue was tried, or to which the issue was properly returnable, or by the award of a venire *facias de novo* for some error of law which intervened in the proceedings. (Jurisdiction of the Supreme Court, p. 186, Sec. 102, Robertson and Kirkham.)

3.

The effect of the respondent's claim is that on the assumption that no appeal was taken from the judgment notwithstanding the verdict in the former fraud action, he was therefore free to come into equity as an actor, of his own choice, with the court of equity thereafter for-

ever enjoined from inquiry into matters purely equitable arising out of the same transaction; with the petitioners forever silenced from defending their inalienable rights, privileges, and immunities in respect to their home, as guaranteed by the Fourteenth Amendment to the Constitution of the United States; and with judgment for the sale of the petitioners' property predetermined in his favor before ever the action in equity was begun.

The California law preserved to the petitioners their equitable rights (California Civil Code, Sec. 3343; California Code of Civil Procedure, Sec. 1050), and also preserved to them, as plaintiffs who had had a JURY judgment in their favor in the former fraud action reversed on appeal, the right to bring a new action within a year from the reversal (California Code of Civil Procedure, Secs. 355, 1047). The judgment notwithstanding the verdict was entered March 2, 1937 [Rec. p. 27]. Within the year, October 25, 1937 [Rec. p. 7], petitioners filed a separate affirmative defense in answer to respondent's self-elected procedure in equity to foreclose the deed of trust and set forth therein additional facts and matters purely equitable arising out of the transaction not theretofore pleaded, or in issue, or adjudicated. Said separate affirmative defense [Rec. pp. 10-17] was a clear intendment by the petitioners to invoke full inquiry into the "clean hands" of the suitor in equity, before judgment should be rendered in respect to the sale of petitioners' home.

Moreover:

> "The equitable principles of 'clean hands' and 'inequity' are not remedies, but are rather self-imposed jurisdictional limitations of a court of equity. They constitute prerequisites that a plaintiff in equity must admit, provide for and secure, as a condition to equity affording him relief."
>
> 1 *Pomeroy's Equity Jurisprudence* (4th ed), paragraphs 388, 397;
>
> *Cf. Olmstead v. United States, infra.*

II.

Petitioners' Answer to Points I and II of Respondent's Argument.

Application of the doctrine, "He Who Seeks Equity Must Do Equity", is the very essence of due process in equity and is inseparable from the Federal concept of due process embodied in and guaranteed by the Fourteenth Amendment to the Constitution of the United States.

To abrogate the doctrine of "clean hands" clearly transcends questions of purely local law and constitutes an offense against the very "conscience" and structure of the law which finds its roots in the federal Constitution; moreover due process in equity clearly requires that, whether or not a claim is asserted by either party, every court, state as well as federal, of its own motion, is in duty bound to make independent inquiry into facts indicating "uncleanliness" of the plaintiff in equity and to bar from its doors the guilty suitor.

It follows that the court of equity below was not, and could not have been, estopped from applying the fundamental principle of equitable due process by the prior judgment of a court of law, as respondent claims, for not until the equitable action was instituted and not until the respondent sought the aid of a court of equity did the exclusively equitable issue of "clean hands" in equity arise.

Petitioners submit that when the state court, sitting in equity, refused to make inquiry into the petitioners' allegations concerning the unconscionable conduct of the respondent, said court broke faith with the source of its own jurisdiction and *rendered a judgment which deprived the petitioners of their home without that due process of the Fourteenth Amendment, which the fundamental rule of equity required the court to grant of its own motion.*

There is no state rule in California and no requirement of particular words for "drawing into question" the claim of a federal right. "Fair precision" and "clear intendment" is all that is required. *The substantive right of due process in equity, was claimed by the petitioners both in the separate affirmative defense in their answer to the complaint* [Rec. pp. 10-17] *and at the trial; and each and every right of the petitioners was especially preserved to them by the express stipulation of the respondent at the trial* [Rec. pp. 27, 28, fols. 45-48].

The petitioners' proffer of proof [Rec. pp. 27, 28, fols. 45-48] at the trial, by reason of the respondent's stipulation that there would be no question thereafter as to form of the offer of proof, nor claim that the proffer was lacking, and that it was to be the best proffer of proof that could be made, was "clearly intended", in sub-

stance and effect, to be the best and most all-embracing preservation to the petitioners that could be made of their claim to each and all of their inalienable rights, privileges, and immunities under the Federal Constitution. It constituted, in substance and effect, an assertion of a claim to federal due process.

Furthermore, although the ruling was adverse and evasive, the highest state court [Rec. pp. 46-49] took cognizance of the fact that the petitioners intended to, and did place before said court, the question as to whether there had been due process in equity [Rec. p. 48]; as to whether the doctrine of "clean hands" had been applied; and whether independent hearing and inquiry into matters and facts purely equitable had been granted by the trial court of equity before judgment was rendered in respect to the sale of their property. The Supreme Court of California, itself, sitting as a court "of conscience" and of "clean hands", by its judgment affirmed the denial of a hearing in the trial court upon the issue of "clean hands", and hence denied due process to the petitioners. Inquiry into the "cleanliness" of the suitor in equity is an inviolable rule of equitable procedure and must be self-imposed by the court.

That is the law of California.

> "The rule of clean hands applies only where a party is appealing as an actor to a court of equity in order to obtain some equitable relief, and, under its operation, an equitable right may be secured, or equitable relief awarded to a defendant which could not be obtained for him in any other way."
>
> *Holland v. Hotchkiss,* 162 Cal. 366.

"A court of equity will not allow itself to become a hand-maid of inequity of any kind. It intervenes, not for the sake of the party who is benefited by the intervention, but for the sake of the law itself. It matters not that no objection is made by either party; when the court discovers a fact which indicates that the contract is illegal and ought not to be enforced, it will of its own motion instigate an inquiry in relation thereto."

Richman v. Bank of Perris, 102 Cal. App. 71.

That is the law of the United States, as well.

Justice Brandeis, in *Olmstead v. U. S.,* 277 U. S. 438, 471, expressed the view:

"The governing principle has long been settled. It is that a court will not redress a wrong when one who invokes its aid has 'unclean hands' . . . The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress. The aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination. The rule is one, not of action, but of inaction. It is sometimes spoken of as a rule of substantive law. But it extends to matters of procedure as well. A defense may be waived. It is waived when not pleaded. *But the objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all parties to the litigation. The court protects itself."* (Italics ours.)

Cf. Nardone v. United States, 302 U. S. 379; 308 U. S. 338.

The courts below, accordingly, violated the duty to accord the petitioners their constitutional right, as guaranteed to them by the Fourteenth Amendment, to have a hearing on the vital issue of the "clean hands" of the respondent.

III.

Petitioners' Answer to Points III and IV of Respondent's Argument.

The non-federal ground of *res adjudicata,* as a matter of local law, is not broad enough to sustain said judgment below. It is not independent of the federal right of due process and of the rights, privileges, and immunities in respect to property guaranteed by the Fourteenth Amendment to the Constitution of the United States; it is not independent of the fundamental doctrine, "He Who Seeks Equity Must Do Equity", which by settled law, conditions the exercise of equitable jurisdiction, constitutes equitable due process, and must be applied by the court of its own motion for the sake of the law itself. Such a contention permits a means of legal banditry with the victim forever silenced and bereft of remedy; it is abhorrent to the concept of ordered liberty and justice guaranteed alike by the principles of equity and by Amendment XIV to the federal Constitution; it undermines uniformity of decision, and offends the "conscience" of the law itself. It is a denial of the "rudimentary demands of justice".

Conclusion.

Petitioners submit that, for the reasons heretofore given, a substantial federal question was raised by them in substance and effect and "by clear intendment". Moreover, to apply the fundamental doctrine, "He Who Seeks Equity Must Do Equity", which constitutes due process in equity and which is embodied in and inseparable from the federal concept of due process as provided by Amendment XIV to the Constitution of the United States, was a self-imposed duty upon the courts below, for the sake of the law itself. Not to apply the doctrine was an abridgment of equitable right and denial of due process. The case turns on the question. The issue is of general and public importance. It warrants consideration by this Court in the interests of the rudimentary principles of justice and fairness. It is of importance to the preservation alike of the fundamental principles of equity, and of the rights, privileges, and immunities of the petitioners, and of due process guaranteed by Amendment XIV to the Constitution of the United States.

Respectfully submitted,

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Attorney for Petitioners.

IN THE

Supreme Court of the United States

JUN 20 1940
CHARLES ELMORE CROPLEY
CLERK

October Term, 1939

No. [redacted] 93

MARGARET B. CARPENTER and L. E. CARPENTER, also known as LEROY E. CARPENTER,

Petitioners,

vs.

ARCHIBALD J. HAMILTON,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1939

No. 1031.

MARGARET B. CARPENTER and L. E. CARPENTER, also known as LEROY E. CARPENTER,

Petitioners,

vs.

ARCHIBALD J. HAMILTON,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Petitioners complain of a ruling of the California trial court sustaining an objection to certain evidence offered by petitioners in a mortgage foreclosure suit. The ruling complained of was sustained by the Supreme Court of California.

The proffered evidence was rejected because the issues to which said evidence was directed had been once adjudicated in a former action between the same parties. In other words, the ruling was an application of the doctrine of *res judicata,* or estoppel by judgment.

Petitioners were defendants in the foreclosure suit [R. 2]. They were plaintiffs in the former action, which was an action for damages for alleged fraud in the sale to the petitioners of the same property involved in the foreclosure suit [R. 29-34].

The judgment was against petitioners in the fraud action [R. 37, fols. 64-65]. No appeal was taken from said judgment and it had become final prior to the time of the trial of the foreclosure action. By way of defense to the foreclosure action, petitioners, in their answer, made substantially the same allegations of fraud which they had previously made in their complaint in the former action. Compare allegations of answer [R. 10-17] with those of complaint in former action [R. 29-34].

The trial court, upon receiving the judgment roll in the former case, and observing the substantial identity of the issues determined in the former action and the issues tendered by the answer, sustained respondent's objection to the proffered evidence [R. 26-29]. The Supreme Court of California, in sustaining the ruling, said [R. 48, fols. 83-84]:

> "It is the general rule, applicable to the facts of this case [fol. 83], that a final judgment on the merits in a prior action is conclusive between the same parties in a subsequent action involving the same subject matter. Such a judgment was tendered in bar of the present affirmative defenses based on the issues thereby determined. When received in evidence it was conclusive between the parties hereto

upon those same matters. (15 Ruling Case Law, pages 950, 951; Price v. Sixth District Agricultural Ass'n, 201 Cal. 502; Henderson v. Miglietta, 206 Cal. 125; Ernsting v. United Stages, Inc., 206 Cal. 733; Edmonds v. Glenn-Colusa Irr. Dist., 217 Cal. 436; Suisun L. Co. v. Fairfield School Dist., 19 Cal. App. 587.) The issues of fraud very definitely were litigated by these parties in the prior action, both in the trial court and on appeal, and the court properly refused to receive evidence on the same issues alleged in the affirmative defenses of the defendant herein. Its finding on the issue of *res judicata* is supported by the judgment roll in the former action which was introduced in evidence in the present action.

No serious consideration may be accorded the attempted invocation of the maxim that he who comes into equity must come with clean hands. A sufficient answer to the contention in this respect is that the issue of fraud having been adjudicated favorably to the plaintiff herein, there is no place for the application of the maxim."

Petitioners' novel theory is that they should have been permitted to try the issues as to fraud a second time, notwithstanding the final judgment in the former case. They contend that the refusal of the California courts to permit a relitigation of these once-decided factual issues deprived the petitioners of property without due process of law.

Summary Statement of Reasons Why Petition Should Be Denied.

(1) No Federal Question Is Presented Because the Application of the Doctrine of Res Judicata Is Purely a Matter of Local Law.

Northern Pacific R. R. Co. v. Ellis, 144 U. S. 458, 464, 36 L. Ed. 504;

Haley v. Breeze, 144 U. S. 130, 131, 132, 36 L. Ed. 373;

San Francisco v. Itsell, 133 U. S. 65, 33 L. Ed. 570;

Adams v. Louisiana Board of Liquidation, 144 U. S. 651, 36 L. Ed. 578;

Beals v. Cone, 188 U. S. 184, 47 L. Ed. 435;

Western Electrical Supply Co. v. Abbeville Electric Light & Power Co., 197 U. S. 299, 49 L. Ed. 765;

King v. West Virginia, 216 U. S. 92, 54 L. Ed. 396;

Postal Telegraph Cable Co. v. Newport, 247 U. S. 464, 62 L. Ed. 1215.

(2) No Federal Question Was Raised, Claimed, Presented, or Argued Either in the Trial Court or in the Supreme Court of California.

New York Central etc. R. R. Co. v. City of New York, 186 U. S. 269, 46 L. Ed. 1158;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291, 47 L. Ed. 480;

Chicago etc. Rwy. Co. v. McGuire, 196 U. S. 128, 49 L. Ed. 413;

Missouri Pacific Rwy. Co. v. Hanna, 266 U. S. 184, 69 L. Ed. 235;

Chandler v. Manifold, 290 U. S. 665, 78 L. Ed. 575.

(3) The Question Presented Is Unsubstantial and Frivolous.

Consolidated Turn Pike Co. v. Norfolk & Ocean View Rwy. Co., 228 U. S. 596, 57 L. Ed. 982;

Seaboard Air Line Rwy. v. Padgett, 236 U. S. 668, 59 L. Ed. 777;

Equitable Life Assurance Society v. Brown, 187 U. S. 308, 47 L. Ed. 190.

(4) The Case Presented Is Not One Involving a Matter of Such Public or General Importance as to Warrant Granting the Discretionary Writ.

Layne & Bowler Corporation v. Western Well Works, Inc., 261 U. S. 387, 67 L. Ed. 712.

I.

No Federal Question Is Presented Because the Application of the Doctrine of Res Judicata Is Purely a Matter of Local Law.

The portion of the opinion of the Supreme Court of California hereinabove quoted shows that the ruling of the trial court and the decision of the Supreme Court involved application of the doctrine of *res judicata,* or estoppel by judgment. The earlier California decisions which are cited in the opinion of the Supreme Court of California clearly demonstrate that the ruling made was in conformity with, and required by, established California law. Indeed, the ruling was strictly in accordance with the doctrine of *res judicata* as it is universally understood and applied. (See 2 Freeman on Judgments, 5th Ed. 1646; also page 1443.)

The decision of the California Supreme Court [R. 46-49] contains no discussion of any federal question. *There is not even the faintest suggestion of a federal question.* Under respondent's next point, it will be shown that no federal question was raised or even remotely suggested either in the trial court or in the Supreme Court of California.

The decisions of this court, cited *supra,* demonstrate that the application of the doctrine of *res judicata* is a matter of purely local law. Clearly, the application of the local law was independently sufficient to sustain the judgment. In *San Francisco v. Itsell,* 133 U. S. 65, this court, speaking through Mr. Justice Gray, used the fol-

lowing language with reference to a judgment of the Supreme Court of California:

> "In the present case, the record of the pleadings, findings of fact and judgment shows that it was unnecessary for that court to decide, and its opinion filed in the case and copied in the record shows that it did not decide, any question against the plaintiff in error, except the issue whether the former judgment rendered against it and in favor of the grantor of the defendants in error was a bar to this action. That was a question of general law only, in no wise depending upon the Constitution, treaties or statutes of the United States. *Chouteau v. Gibson,* 111 U. S. 200 (28:400).
>
> *Writ of error dismissed for want of jurisdiction."*

Likewise in the instant case, the record shows that the sole question involved was whether or not petitioners were estopped by the judgment in the former action from asserting that respondent was guilty of fraudulent misrepresentations. It must be quite apparent that the California courts decided this question correctly, because it is established by the decisions, to which the California Supreme Court referred, that the essential elements of actionable fraud are precisely the same both in law and in equity. Furthermore, said California decisions establish the proposition that a final judgment upon the merits is forever conclusive upon the parties with respect to every material issue of *fact* tendered in the litigation in which the judgment was rendered. *Todhunter v. Smith,* 219 Cal. 690, 28 Pac. (2d) 916. Therefore, the California Supreme Court correctly said that there was no place for the application of the maxim that "he who comes into equity must come with clean hands."

II.

No Federal Question Was Raised, Claimed, Presented, or Argued Either in the Trial Court or in the Supreme Court of California.

The record before this court shows that the existence of a federal question was not in any way claimed or asserted either in the trial court or the Supreme Court of California. The proceedings in the trial court with reference to the ruling complained of are in the record [R. 26-29, fols. 45-50]. Not one word will be found in the record to indicate that there was the faintest hint or suggestion made in the trial court that any right, privilege, or immunity under the constitution or laws of the United States was involved.

As this court said in *Beals v. Cone,* 188 U. S. 184, 188, with reference to a judgment of the Supreme Court of Colorado:

> "And in the opinion of the supreme court, outside of the matters of estoppel and *res judicata* before referred to, there is nothing to even suggest that it was requested to consider any question of a title, right, privilege, or immunity under the constitution or laws of the United States."

This court further said, in dismissing the writ of error, "We fail to see that any title, right, privilege, or immunity of a Federal nature was specially set up and claimed."

The same is true in the case at bar. Furthermore, in the trial court the application of the maxim that "he who

comes into equity must come with clean hands" was not at all suggested. The phrase "unclean hands" was not once used in the trial court.

In the stipulation regarding the printing of the record herein there is the following language [R. 2]:

> "It Is Further Stipulated and Agreed that respondent, in entering into this stipulation, concerning the matter to be included in the printed record herein, does not admit that any federal question is involved herein; neither does respondent by this stipulation, or otherwise, admit that any federal question was presented, claimed, or suggested either in the trial court or in the Supreme Court of California.
>
> *It Is Further Stipulated that there is nothing in those portions of the record presented to the Supreme Court* [fol. 3] *of California which are to be omitted from the record herein, nor in the briefs of counsel filed in the Supreme Court of California, presenting, assigning, or arguing any federal question."*

The foregoing stipulation accords with the fact that no federal question was presented, assigned, or argued either in the briefs filed in the Supreme Court of California or in any of the proceedings not made a part of the record in this court. The petition herein absolutely fails to point out in the record anything purporting to show that a federal question was claimed or suggested in the California courts. No federal question was ever raised or suggested by petitioners, in any manner or form whatsoever, prior to the filing of this petition in this court.

III.

The Question Presented Is Unsubstantial and Frivolous.

Respondent is unable to conceive of a more frivolous and unsubstantial question than that which petitioners present in the case at bar. The absence of a *federal* question and the absence of the *assertion* of a federal question in the California courts are equally conspicuous. As a matter of fact, the question of *local* law presented to the Supreme Court of California was frivolous and unsubstantial in the light of the decisions cited by that court. In view of the rather obvious correctness of the ruling of the trial court, the disposition of petitioners' contentions on appeal by the Supreme Court may aptly be described as tolerant.

Applicable to the present petition is the following language of this court from the decision in *Consolidated Turnpike Co. v. Norfolk & Ocean View Rwy. Co.*, 228 U. S. 596, 603:

> "The claim that in thus holding and deciding the court below denied to the plaintiffs in error due process of law under the 14th amendment is neither real nor substantial, but so entirely without merit as to justify this court in refusing to take jurisdiction."

IV.

The Case Presented Is Not One Involving a Matter of Such Public or General Importance as to Warrant Granting the Discretionary Writ.

Not only is it obvious that there is no merit in petitioners' claim of error in the rulings of the California courts, but it is equally apparent that petitioners have presented no case of great public or general importance. It may be granted that the results of the litigation are important to the parties litigant, but this assumption would not be sufficient to entitle petitioners to the issuance of the discretionary writ which they seek.

Conclusion.

Respondent submits that not only have petitioners failed to present any federal question, or to show that any federal question was claimed in the California courts, but also that it *affirmatively* appears that no federal question was involved or asserted. Furthermore, the question sought to be presented is unsubstantial, frivolous, and wholly without merit. Therefore, it is submitted that the writ should be denied.

Respectfully submitted,

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